IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 1799 of 1993
Date of Decision: 11.10.2006

United India Insurance Co.Ltd.

..... Appellant

Versus

Smt.Santosh Kumari and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Neeraj Khanna, Advocate for the appellant.
Shri G.S.Jaswal, Advocate for respondent nos. 1 to 4.
Shri Madan Lal, Advocate for Shri Raman Mahajan, Advocate for respondent no.7.

....

Mahesh Grover,J.

In this appeal by the Insurance Company against award dated 15.6.1993 of Motor Accident Claims Tribunal, Hoshiarpur (hereinafter described as `the Tribunal') passed in M.A.C.T. Case No. 40 of 11.6.1992, the only challenge made is qua the finding recorded by the Tribunal pertaining to the validity of the driving licence held by the driver of the offending vehicle and fastening of the liability upon it as a consequence thereof.

Shri Neeraj Khanna, learned counsel for the appellant contended that it had been established on the record that the licence was not

issued in the name of Satnam Singh-respondent no.7 and rather, it stood in the name of one Ashwani Kumar. Reference was made to report Exhibit R1 pertaining to Driving Licence No.8263 of 1989-90.

On the other hand, the contention of Shri Khanna was sought to be repelled by the learned counsel for the respondents, who placed reliance on the judgment of this Court reported as 2001(2) R.C.R.(Civil) 239 – United India Insurance Company Ltd. Versus Surjit Singh Sodhi, to say that the onus of proving the invalidity of the driving licence has not been discharged by the appellant effectively and that mere examination of a Clerk from the office of the Licensing Authority is not sufficient.

After hearing the learned counsel for the parties and perusing the record, I am of the considered view that the appeal does not deserve to succeed. A perusal of the record, particularly the statement of RW1-Satnam Singh reveals that licence marked E2 had been issued in his name, which bore the signatures of one Karam Singh, the then District Transport Officer, Hoshiarpur along with the seal of the concerned office. This licence had been further renewed up to 21.12.1995 by the office of District Transport Officer, Jalandhar. In contradistinction to this, there is Exhibit R1 indicating that licence no.8263 of 1989-90 was not issued in the name of Satnam Singh. Exhibit R1 is purported to have been made on the basis of record, but the same witness appearing as RW1 has stated that he had no knowledge of the genuineness of the licence as he was not posted in the said office at the relevant time. No other record or evidence was adduced by the appellant to prove this issue.

With the above evidence on record, it cannot be conclusively held as to whether the licence was valid or not. The onus has not been

discharged efficiently by the appellant.

However, there is sufficient evidence on record to show that the owner of the offending vehicle had verified the fact that Satnam Singh was holding a licence in his name. As a prudent employer, one would only go by the document and accept its validity. This is sufficient discharge of the onus of responsibility as an employer. The reasonable care which an owner of the vehicle is required to exercise at the time of employing a driver seems to have been taken by the owner of the offending vehicle in this instant case. It cannot, therefore, be said that there was a willful violation of the terms and conditions of the insurance policy.

Now, the question remains as to whether the Insurance Company is to be held liable to pay the amount in the wake of the evidence available on record.

In National Insurance Co.Ltd. Versus Swaran Singh and others, 2004(1) A.C.J. 1, the Apex Court has dealt with this aspect of the matter in extenso. Paragraph 85 of that judgment is as follows:-

> "It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru's case, 2003 ACJ 611 (SC), the matter has been considered in some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof

> the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later."

Thereafter, it was concluded by their Lordships that the liability of the Insurance Company to satisfy the decree at the first instance cannot be denied. However, it shall have the right to recover the awarded amount from the owner or the driver of the offending vehicle.

Since the Tribunal has a limited scope of enquiry, the effective proof of fake driving licence being held by the driver cannot be establaished beyond reasonable shadow of doubt. Dealing with such a situation, the Supreme Court observed in Swaran Singh's case (supra) as under in paragraph 99 of the judgment:-

> "We may, however,hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of sections 165 and 168 of the Act. However, in the

event, having regard to the limited scope of the inquiry in the proceedings before the Claims Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to knowledge of the insurer at a later stage."

In view of the above discussion, the appeal deserves to fail. However, the appellant shall be at liberty to establish independently before the Court of competent jurisdiction the invalidity of the driving licence and initiate any other proceedings against the owner and the driver of the vehicle in question, if so advised.

With the above observations, the appeal is disposed of.

October 11,2006 (Mahesh Grover)
"SCM" Judge